

REMARKS

The Examiner is thanked for indicating that claims 6-9 and 19-22 contain allowable subject matter, removing all of the art rejections of the previous Office Action, removing the objection to the drawings, and removing the objection to the specification.

STATUS OF CLAIMS

Claims 1- 36 are pending in the case. Claims 1-28 are original claims, and claims 29-36 are new claims. No claims are amended.

CLAIM REJECTIONS – 35 U.S.C. § 102 and § 103

The Examiner rejected claims 1-4, 10-17 and 23-28 under 35 U.S.C. §102(e) as allegedly anticipated by Hsu (U.S. Patent No. 6,363,318). The Examiner also rejected claims 5 and 8 under 35 U.S.C. §103 as allegedly unpatentable over Hsu in view of Chang (U.S. Patent Application Publication No. 2003/0123448). These rejections are respectfully traversed.

Affidavit under 37 CFR § 1.131

Attached are (1) an Affidavit under 37 CFR § 1.131 and (2) a supporting redacted disclosure document.

The filing date of Hsu, which is August 31, 1999, is less than one year prior to the filing of the present Application, which is March 14, 2000, and therefore does not constitute a statutory bar. The effective date of Hsu as a reference is August 31, 1999. The Affidavit avers the existence, prior to the effective date of Hsu as a reference, of a

working version of subject matter that is an embodiment of the claims. The existence of a working version of the claimed invention constitutes a reduction to practice. Thus, the affidavit in-and-of-itself evidences that the claimed invention was conceived and reduced to practice prior to the effective date of Hsu as a reference.

The disclosure document describes subject matter that is an embodiment of the claimed invention, and in page 8, the disclosure document states

Cisco Use: This method is currently being used in Cisco PathTool to determine the layer 2 path.

Since the Affidavit avers that the disclosure document was written before the filing date of Hsu, the disclosure document is further evidence that the claimed invention was reduced to practice prior to the filing date of Hsu. Further, the Affidavit avers that the date of the disclosure document is prior to the filing date of Hsu. Thus, the Affidavit, when combined with the disclosure document, is a showing of facts that are of a character and weight as to establish reduction to practice prior to the effective filing date of the reference. Accordingly, Hsu should be removed as a reference, and the rejection under 35 USC § 102(e) and § 103 should be withdrawn.

OBJECTION TO CLAIMS 6-9 AND 19-22

Since the rejection of the base claims should be removed, the objection to claims 6-9 and 19-22 as depending upon rejected base claims should also be withdrawn.

NEW CLAIMS

Each of new claims 29-36 depend on one of claims 1 and 14. Since Hsu should be removed as a reference regarding the base claims of 1 and 14, therefore claims 29-36 are also allowable. Additionally, the passages of Hsu cited by the Examiner never

disclose or suggest (1) using Hsu's method for monitoring, as recited in claims 29 and 33, (2) using Hsu's method for obtaining diagnostic information, as recited in claims 30 and 34, (3) using Hsu's method for tracing a path at level 2, as recited in claims 31 and 35, or (4) that Hsu's method determines a verifiable path that is in a bridge forwarding table, as recited in claims 32 and 36. Further, the title of Hsu is "Constraint-Based Route ***Selection*** Using Biased Cost" (emphasis added), indicating that Hsu uses his method for selecting a route (that presumably was not previously determined), and not for monitoring, obtaining diagnostic information, tracing a path, or determining a path that could have been verified by a comparison with a bridge forwarding table.

DISCLAIMER

The filing of the affidavit and the filing of new claims 28-32, neither affirms nor denies whether the rejections over art of claims 1-5, 10-18, and 23-28 would have been valid were the Affidavit not filed. The Applicant reserves the right to establish differences and/or similarities between Hsu and any of claims 1-5, 10-18, and 23-28.

CONCLUSIONS AND MISCELLANEOUS

The Applicants believe that all issues raised in the Office Action have been addressed and that allowance of the pending claims is appropriate. Entry of the amendments herein and further examination on the merits are respectfully requested.


The Examiner is invited to telephone the undersigned at (408) 414-1213 to discuss any issue that may advance prosecution or any other issues related to this application.

No fee is believed to be due specifically in connection with this Reply. To the extent necessary, Applicants petition for an extension of time under 37 C.F.R. § 1.136. The Commissioner is authorized to charge any fee that may be due in connection with this Reply to our Deposit Account No. 50-1302.

Respectfully submitted,

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Dated: November 26, 2003



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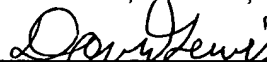
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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.

on November 26, 2003
(Date)

by



(Signature)